

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TERESA RENITA BURWELL,

Plaintiff,

v.

SIGNATURE REAL ESTATE GROUP &
TRIPLE E PROPERTIES, LLC

Defendants.

Case No. 2:25-cv-00284-RFB-EJY

**ORDER
AND
REPORT AND RECOMMENDATION**

Pending before the Court is Plaintiff Teresa Burwell's application to proceed *in forma pauperis* (sometimes "IFP") and Complaint. ECF Nos. 1, 1-1. Based on the representation in the IFP, the Court finds Plaintiff is unable to pay the required filing fee and her application to proceed *in forma pauperis* is granted below.

I. Screening Standard

Upon granting a request to proceed *in forma pauperis*, a court must screen the complaint under 28 U.S.C. § 1915(e)(2). To survive § 1915 review, a complaint must "contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). This standard "does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Id.* (internal quotation omitted). The Court must liberally construe pro se complaints and may only dismiss them "if it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir. 2014).

II. Discussion

Plaintiff, a Nevada resident, asserts multiple claims against Signature Real Estate Group and Triple E Properties (the owner and manager of her apartment complex, respectively), for whom Nevada addresses are given. ECF No. 1-1 at 2. Plaintiff alleges violations of the Sherman Antitrust Act (15 U.S.C § 1, *et seq.*), the Clayton Act (15 U.S.C. § 12, *et seq.*), the Federal Trade Commission

1 Act (15 U.S.C § 41, *et seq.*) and NRS 118A.300.¹ ECF No. 1-1 at 3. Plaintiff alleges Defendants
 2 violated these laws by increasing her rent from \$1,495 to \$2,200, which she characterizes as
 3 “predatory price fixing by means of increasing [her] rent over 5% ... and failing to provide ... proper
 4 notice.” *Id.* at 4. Plaintiff asserts these alleged violations caused her “unnecessary duress, stress,
 5 embarrassment and suffering,” and resulted in her being homeless for a period of six months. *Id.*

6 The Court begins by considering Plaintiff’s federal claims, because in the absence of
 7 complete diversity or a valid federal question, the Court would be unable to exercise jurisdiction
 8 over Plaintiff’s state law claim. *See Residential Funding Real Estate Holdings, LLC v. Chavez*, Case
 9 No. CV 10-04488 MMM (JCGx), 2010 WL 3220065 (C.D. Cal. Aug. 12, 2010) (“[A] court cannot
 10 exercise supplemental jurisdiction unless at least one claim in the action falls independently within
 11 its jurisdiction.”).

12 With regards to Plaintiff’s claim under the Federal Trade Commission Act, that statute does
 13 not include a private right of action. *Belssner v. One Nev. Credit Union*, Case No. 2:17-CV-1648
 14 JCM-VCF, 2017 WL 3910776, at *2 (D. Nev. Sep. 19, 2017) (“[T]he FTCA does not provide for a
 15 private right of action.”) (citing, *inter alia*, *Carlson v. Coca Cola Co.*, 483 F.2d 279, 280 (9th Cir.
 16 1973)). The Court therefore recommends dismissing this claim with prejudice.

17 Turning to the Sherman Antitrust Act, while that Act itself does not include a private right
 18 of action, section 4 of the Clayton Act does allow private parties to sue for violations of the Sherman
 19 Act and other relevant antitrust laws. 15 U.S.C. § 15 (“[A]ny person who shall be injured in his
 20 business or property by reason of anything forbidden in the antitrust laws may sue therefor in any
 21 district court of the United States in the district in which the defendant resides.”) The Clayton Act
 22 is not a freestanding cause of action, however, and thus Plaintiff must still properly allege violation
 23 of a specific antitrust law. *Kendall v. Visa U.S.A., Inc.*, 518 F.3d 1042 (9th Cir. 2008) (The Clayton
 24 Act “does not furnish an independent cause of action[;] [r]ather, it allows the court to fashion relief

25
 26 ¹ Plaintiff also alleges at different points violations of “AB40,” which she describes as providing that “no eviction
 27 should be filed sought or granted with a pending rental assistance application.” ECF No. 1-1 at 3-4. Based on this
 28 description, the Court construes Plaintiff’s Complaint to be referencing Nevada Senate Bill 335 (2023), a proposed piece
 of legislation that would have provided such protections. 2023 NV S.B. 335 (LexisNexis). However, even assuming
 the Court had jurisdiction over alleged violations of state eviction law, SB 335 was vetoed and thus never enacted into
 law. *Id.*

1 upon a showing of a separate violation of the antitrust laws.”) Though Plaintiff does not specify
 2 which provision of the Sherman Antitrust Act she alleges Defendants violated, the Court construes
 3 her reference to price fixing to be alleging a violation of Section 1 of that Act. *See Optronic Techs.,*
 4 *Inc. v. Ningbo Sunny Elec. Co., Ltd.*, 20 F.4th 466, 479 (9th Cir. 2021) (“Horizontal price fixing and
 5 market allocation are per se Section 1 violations.”) (citing *Palmer v. BRG of Ga., Inc.*, 498 U.S. 46,
 6 49 (1990)).

7 To state a claim under Section 1 of the Sherman Act, Plaintiff must allege “(1) that there was
 8 a contract, combination, or conspiracy; (2) that the agreement unreasonably restrained trade under
 9 either a per se rule of illegality or a rule of reason analysis; and (3) that the restraint affected interstate
 10 commerce.” *Tanaka v. Univ. of S. Cal.*, 252 F.3d 1059, 1062 (9th Cir. 2001) (internal quotations
 11 omitted). Further, the allegations must include “enough factual matter (taken as true) to suggest that
 12 an agreement was made.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). In addition to the
 13 specific pleading requirements under this provision, a private party seeking to enforce antitrust laws
 14 through a private suit under the Clayton Act must demonstrate an antitrust injury, not simply an
 15 individual injury. *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 815 (9th Cir. 1988) (A plaintiff
 16 must “allege antitrust injury to the market or to competition in general, not merely injury to
 17 individuals”). An antitrust injury is an injury “of the type the antitrust laws were intended to prevent
 18 that also flows from that which makes defendants’ acts unlawful.” *Brunswick Corp. v. Pueblo Bowl-*
 19 *O-Mat, Inc.*, 429 U.S. 477, 489 (1977).

20 Applying these standards to Plaintiff’s Complaint, the Court finds she fails to state a claim
 21 under Section 1 of the Sherman Act or any other antitrust law. Plaintiff asserts that her rent increase
 22 was the result of “predatory price fixing,” ECF No. 1-1 at 4, but she does not allege the existence of
 23 an agreement between Defendants and any other leasing agency or property manager to set a
 24 minimum rent throughout a specified market, or that the increase in her rent was part of a larger
 25 scheme that restrained trade in a way that affected interstate commerce. More fundamentally,
 26 Plaintiff only alleges injury to herself in the form of “unnecessary duress, stress, embarrassment, and
 27 suffering.” *Id.* To sustain an antitrust claim, Plaintiff must allege an injury to the relevant market
 28 in the form of reduced competition and that such market injury in turn caused her own injury.

1 *McGlinchy*, 845 F.2d at 815. The Court dismisses Plaintiff's antitrust claims; however, because it
2 is possible Plaintiff will be able to plead additional facts sufficient to state a claim under the Sherman
3 Act, this dismissal is without prejudice to filing an amended complaint.

4 Finally, because none of Plaintiff's federal claims survive screening and there is no diversity
5 of parties, the Court dismisses her claim under NRS 118A.300. If Plaintiff believes Defendants have
6 violated relevant protections for renters under Nevada law, she may file such a claim in state court
7 or, if she chooses to file an amended complaint in the instant action and such complaint states a valid
8 claim under federal law, the Court, at its discretion, may exercise supplemental jurisdiction over this
9 state law claim. Therefore, this dismissal will be without prejudice.

10 **III. Conclusion**

11 For the above reasons, the Court finds Plaintiff fails to state a claim upon which relief can be
12 granted and therefore dismisses her Complaint. If Plaintiff wishes to replead her antitrust claims in
13 an Amended Complaint, she must be sure to properly allege the existence of an agreement between
14 Defendants and other leasing managers, and that such agreement caused an injury not only to herself,
15 but to the rental market generally through reduced competition. Additionally, any claims arising
16 under Nevada law will be considered only if Plaintiff properly states a claim under federal law.

17 **IV. Order**

18 Accordingly, IT IS HEREBY ORDERED that Plaintiff's application to proceed *in forma*
19 *pauperis* is GRANTED.

20 IT IS FURTHER ORDERED that Plaintiff's claims under the Sherman Antitrust Act, the
21 Clayton Act, and NRS 118A.300 are DISMISSED without prejudice.

22 IT IS FURTHER ORDERED that Plaintiff **must**, if she so chooses, file an amended
23 complaint, which must be titled "FIRST AMENDED COMPLAINT," by **April 14, 2025**. Plaintiff's
24 filing must be complete in and of itself. That means all of the facts and all claims Plaintiff wishes
25 the Court to review must be included in the FIRST AMENDED COMPLAINT. The Court cannot
26 review Plaintiff's original Complaint for any purpose.

27 IT IS FURTHER ORDERED that failure to timely file and otherwise comply with this Order
28 will result in a recommendation to dismiss this case in its entirety.

V. Recommendation

IT IS HEREBY RECOMMENDED that Plaintiff's claim under the Federal Trade Commission Act be DISMISSED with prejudice.

Dated this 14th day of March, 2025.


ELAYNA J. YOUCHAH
UNITED STATES MAGISTRATE JUDGE

NOTICE

Under Local Rule IB 3-2, any objection to this Report and Recommendation must be in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court holds the courts of appeal may determine that an appeal has been waived due to the failure to file objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). The Ninth Circuit also held that (1) failure to file objections within the specified time and (2) failure to properly address and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).